

**ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

February 9, 2022

1:31 p.m.

DRAFT

MEMBERS PRESENT

Senator Joshua Revak, Vice Chair
Senator Peter Micciche
Senator Gary Stevens
Senator Elvi Gray-Jackson

MEMBERS ABSENT

Senator Mia Costello, Chair

COMMITTEE CALENDAR

SENATE BILL NO. 143

"An Act relating to horizontal property regimes and common interest communities; and relating to mortgages, deeds of trust, and other property liens."

- MOVED SB 143 OUT OF COMMITTEE

SENATE BILL NO. 173

"An Act relating to the practice of dentistry; relating to dental radiological equipment; and providing for an effective date."

- MOVED SB 173 OUT OF COMMITTEE

SENATE BILL NO. 151

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

- MOVED SB 151 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 143

SHORT TITLE: COMMON INTEREST COMMUNITIES; LIENS

SPONSOR(S): SENATOR(S) REVAK

01/18/22 (S) PREFILE RELEASED 1/7/22

01/18/22 (S) READ THE FIRST TIME - REFERRALS
01/18/22 (S) L&C
02/09/22 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 173

SHORT TITLE: DENTIST SPEC. LICENSE/RADIOLOGIC EQUIP
SPONSOR(s): SENATOR(s) WILSON

01/28/22 (S) READ THE FIRST TIME - REFERRALS
01/28/22 (S) L&C, FIN
02/09/22 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 151

SHORT TITLE: EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD
SPONSOR(s): SENATOR(s) MICCICHE

01/18/22 (S) PREFILE RELEASED 1/7/22
01/18/22 (S) READ THE FIRST TIME - REFERRALS
01/18/22 (S) L&C, FIN
02/09/22 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

EMMA TORKELSON, Staff
Senator Josh Revak
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information and presented the sectional analysis for SB 143.

SARAH BADTEN, Counsel
Birch Horton Bittner and Cherot
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 143.

SUSAN JENSEN, Operations Manager
Bayshore Owners Association Inc. (Bayshore)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 143.

JASON HENNINGS, Chapter President
Community Associations Institute of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 143.

SENATOR DAVID WILSON
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 173.

JASMIN MARTIN, Staff

Senator David Wilson

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced SB 173 on behalf of the sponsor.

DAVID LOGAN, DDS, Executive Director

Alaska Dental Society

Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony on SB 173.

SARA CHAMBERS, Director

Division of Corporations Business and Professional Licensing

Department of Commerce, Community and Economic Development

Juneau, Alaska

POSITION STATEMENT: Answered questions and provided information during the hearing on SB 173.

DAVID NIELSON, DDS, Chair

Alaska Board of Dental Examiners

Anchorage, Alaska

POSITION STATEMENT: Provided information related to SB 173.

MADISON GOVIN, Staff

Senator Peter Micciche

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced SB 151 on behalf of the sponsor

KRIS CURTIS, Legislative Auditor

Legislative Audit Division

Legislative Affairs Agency

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Reviewed the sunset audit for the Alcoholic Control Board (ABC Board) during the hearing on SB 151.

DANA WALUKIEWICZ, Chair

Alcoholic Beverage Control Board

Anchorage, Alaska

POSITION STATEMENT: During the hearing on SB 151, articulated his reasons for disagreeing with the length of the extension recommended in the sunset audit for the ABC Board.

ACTION NARRATIVE

[1:31:17 PM](#)

ACTING CHAIR STEVENS called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Gray-Jackson, Micciche, Revak, and Acting Chair Stevens.

SB 143-COMMON INTEREST COMMUNITIES; LIENS

[1:32:28 PM](#)

ACTING CHAIR STEVENS announced the consideration of SENATE BILL NO. 143 "An Act relating to horizontal property regimes and common interest communities; and relating to mortgages, deeds of trust, and other property liens."

[1:32:40 PM](#)

SENATOR JOSHUA REVAK, speaking as sponsor, introduced SB 143 by reading the sponsor statement.

[Original punctuation provided.]

In 1986, the Uniform Common Interest Ownership Act (UCIOA) made major revisions to Alaska statutes governing Homeowners Associations (HOA's) and Condominium Owner's Association (COA's) in Alaska. However, two issues were not fixed by UCIOA when it passed and remain problematic for HOA's/COA's and the members of these communities to this day. SB 143 addresses these two issues and ensures that all associations, regardless of when they were formed, receive the same treatment.

The first change SB 143 makes is to the process by which HOA's/COA's make amendments to their governing documents. As statutes currently stand, the process of amending an HOA's/COA's charter is so onerous that many associations are forced to continue operating with long-outdated rules. Unless a statutory change is made, these associations may be forced to operate under outdated and archaic standards forever. Unfortunately, this problem affects mostly older and often lower-income properties; the very properties that most need the protections provided by UCIOA. SB 143 does not eliminate the current amendment process, but instead provides a more reasonable alternative for

associations who are unable to complete the process currently laid out.

Secondly, when a home in an HOA/COA is abandoned, or the owners stop paying their regular dues, the HOA/COA (and thereby all the individuals who pay their dues) bear the cost of maintaining the property until the house is foreclosed upon. UCIOA grants all HOA's/COA's "super-priority lien status," which allows them to collect six months of outstanding HOA/COA dues from a bank holding a first lien on the property. However, in practice, the statute has been interpreted to not grant super-priority lien status to HOA's/COA's created before 1986 and UCIOA. SB 143 rectifies this decades old problem for pre-1986 associations and clarifies what is already in the statute to assure that pre-1986 HOA's/COA's will receive their super-priority lien just like their post-1986 counterparts.

SB 143 will serve to benefit homeowners associations, condominium associations, common interest ownership communities, and the homeowners within those communities by providing an alternative to the overburdensome charter amendment process currently laid out in statute and assuring that even pre-1986 HOA's/COA's are compensated for the costs they incur to maintain homes that are not paying dues. SB 143 will directly benefit all dues-paying homeowners in HOA's/COA's and grant all HOA's/COA's, regardless of when they were formed, the same flexibility and rights

SENATOR REVAK thanked the chair for hearing the bill and advised that his staff was available to walk through the sectional analysis.

1:36:01 PM

SENATOR GRAY-JACKSON asked for further explanation of lienholders and notices.

SENATOR REVAK explained that lienholders typically are banks and several dozen banks could hold liens in a single homeowner's association. Lienholders must be given notice and agree to any change an association proposes to its bylaws. For example, an association cannot update the amount it holds in escrow to pay for utilities unless every bank that holds a lien in that homeowners association agrees. In older associations that have not gone through the onerous task of updating the bylaws, that

escrow amount may not comes close to covering the actual cost of the utilities. Responding to a further question, he clarified that the bill does have to do with bylaws. The 1986 Uniform Common Interest Ownership Act (UCIOA) that changed Alaska statutes governing Alaska homeowners associations and condominium owner association is being interpreted to not apply to associations formed pre-1986 so they do not have the same opportunities as newer associations.

SENATOR GRAY-JACKSON noted that he talked about bylaws but he also mentioned utilities.

ACTING CHAIR STEVENS suggested Ms. Torkelson respond.

[1:38:38 PM](#)

EMMA TORKELOSON, Staff, Senator Josh Revak, Alaska State Legislature, Juneau, Alaska, explained that the reference to utilities was an example of an association that wanted to change an outdated rule in the bylaws.

ACTING CHAIR STEVENS asked Ms. Torkelson to present the sectional analysis.

[1:39:33 PM](#)

MS. TORKELOSON presented the sectional analysis for SB 143. It read as follows:

[Original punctuation provided.]

Section 1 - Amends AS 34.07 by adding a new section which lays out an alternative method for Common Interest communities formed before Uniform Common Interest Ownership Act of 1986 (UCIOA) to obtain lienholder approval of proposed changes to their governing documents.

She noted that Section 3 inserts this same language in AS 34.08 so it affects associations formed post 1986. She continued.

Under this section, pre-UCIOA communities who choose to use this alternative "shall send to a lienholder a dated written notice and a copy of the proposed amendment by certified mail, return receipt requested[.]" If the association complies with the written notice requirements and the lienholder does not respond within 60 days of the postmark date of the

notice, "the lienholder is considered to have approved the proposed amendment."

MS. TORKELSON clarified that this is not a repeal but an alternative method in case the lienholder does not respond to the written notice.

[1:41:17 PM](#)

SENATOR MICCICHE offered that this does not sidestep what the homeowners want to do; it provides an alternative for the lienholder approval requirement.

MS. TORKELSON agreed this only provides an alternative to the written consent requirement for lienholders. It does not change any requirement to get approval from the property owners in the association.

SENATOR REVAK added that his office initially heard that lienholders did not want to commit to proposed changes to bylaws on homeowner associations in general, and particularly in writing.

[1:43:40 PM](#)

MS. TORKELSON continued the sectional analysis:

Section 2 - Amends AS 34.08 to clarify that communities formed before UCIOA are granted super-priority lien status in the same way that their post-UCIOA counterparts are currently granted by AS 34.08.470(b).

She restated that the existing statute granted super-priority lien status to all HOAs but it was interpreted to only include those formed post UCIOA, which passed in 1986. She noted that a list of 250 HOAs that are affected was in the bill packets.

Section 3 - Inserts the same language as in Section 1 to AS 34.08 by to provide an alternative method for Common Interest Communities formed after 1986 to obtain lienholder approval of proposed changes to their governing documents. Under this section, post-UCIOA communities who choose to use this alternative "shall send to a lienholder a dated written notice and a copy of the proposed amendment by certified mail, return receipt requested[.]" If the association complies with the written notice requirements and the lienholder does not respond within 60 days of the

postmark date of the notice, "the lienholder is considered to have approved the proposed amendment."

1:45:23 PM

VICE CHAIR STEVENS turned to invited testimony.

1:45:56 PM

SARAH BADTEN, Counsel, Birch Horton Bittner and Cherot, Anchorage, Alaska, stated that she has been practicing community association law for about 15 years, helping homeowner and condominium associations interpret and enforce their governing documents. She has been approached by many associations that have been affected by the issues SB 143 addresses.

She recounted that in Alaska, properties in condominium and homeowner associations that were built before the Uniform Common Interest Ownership Act (UCIOA) was adopted in 1986 are treated differently than property in associations built post-1986. Homeowners in pre-1986 communities are not able to change their declaration. Responding to the earlier committee discussion, she explained that the bylaws refer to how associations run their business. What the bill addresses are the recorded covenants on the property, which are also called the declaration or restrictive covenants. It is those documents that older communities cannot amend because lienholders must approve in writing any change to the declaration. Associations have two choices if the lienholders don't all respond; either they continue to operate under the old standards or they operate in non-compliance with the declaration. She stressed that she would not advise operating in non-compliance.

MS. BADTEN stated that SB 143 resolves this problem by providing a process for notification to lienholders about any change to the declaration and an opportunity to respond. However, if they are silent the association may proceed to make the change.

MS. BADTEN also voiced support for the provision that clarifies that older associations have super-priority lien status just like associations created after 1986. Some banks currently are refusing to pay older associations any of the outstanding dues on properties that have been foreclosed, arguing that it would invalidate the declaration. SB 143 makes it clear that the same rules relating to lienholder status apply to both pre- and post-1986 associations. She pointed out that older associations need this protection the most. Those buildings are more likely to be in need of repair and the homeowners are less likely to have the resources to pay additional assessments to offset unpaid dues.

SB 143 will help these pre-1986 properties be able to provide the maintenance services the association is contractually required to provide under its declaration. This provides equal standing for both pre- and post-1986 properties.

1:50:45 PM

SENATOR GRAY-JACKSON offered her understanding that changes to covenants need to be approved by the lienholders.

MS. BADTEN clarified that the lienholder approval needs to be in writing.

SENATOR GRAY-JACKSON noted that her homeowner association (HOA) is not on the list.

MS. BADTEN explained that the list is not comprehensive; it only includes those condominium and homeowner associations that have the word "association" in the name.

VICE CHAIR STEVENS observed that the list could be longer than the 250 identified in the material in the bill packets.

MS. BADTEN agreed.

SENATOR MICCICHE said he understands the problem and he has no issues with the bill.

1:53:32 PM

SUSAN JENSEN, Operations Manager, Bayshore Owners Association Inc. (Bayshore), Anchorage, Alaska, concurred with Sarah Badten's testimony in support of SB 143. She stated that Bayshore was founded in 1974 and is comprised of 454 private homes so the association has to deal with at least that many banks. She related that Bayshore has wanted to amend its declaration a number of times through the years but was never able to do so because of the requirement to get written approval from all lienholders. For example, the outdated requirements in Bayshore's declaration limit the reserve to \$20,000 despite infrastructure upgrades that would cost far more than that. Bayshore also lost the opportunity about 10 years ago for a \$100,000 improvement that would have made it safer for children to walk to school using the association's green belts. The declaration did not allow it. Further, the association often loses out on dues and fees owed to it on properties that are awaiting sale or in foreclosure by the bank. In some instances the unpaid dues and fees amounted to \$11,000 on individual properties. This debt is passed along to the innocent dues

paying property owners. She urged the committee to pass SB 143 to protect older associations.

ACTING CHAIR STEVENS listed the individuals available to answer questions.

SENATOR MICCICHE summarized that SB 143 addresses the restriction that prevents older associations from changing their declaration by giving lienholders the opportunity to respond in writing to a proposed change within 60 days. If the responses are not forthcoming, the wishes of the members of the HOA will be honored.

MS. JENSEN answered yes and added that the members of the association are thrilled that the bill was put forward.

SENATOR MICCICHE said he wanted it to be clear that SB 143 is about honoring the rights of the individual homeowners. He referenced the list of 248 associations and noted that just seven were in non-compliance. He asked what the typical reason is for being out of compliance.

[1:59:50 PM](#)

MS. BADTEN answered that associations that are not professionally managed may not file their biannual report to the state timely and will be out of compliance until the report is filed.

[2:00:56 PM](#)

VICE CHAIR STEVENS asked Ms. Neseth if she had any comments.

[2:01:11 PM](#)

PHOEBE E. NESETH, Esq., Director, Government and Public Affairs, Community Associations Institute stated that she submitted a letter that addresses how other states have incorporated provisions similar to those in SB 143.

[2:01:55 PM](#)

ACTING CHAIR STEVENS opened public testimony on SB 143.

[2:02:23 PM](#)

JASON HENNINGS, Chapter President, Community Associations Institute of Alaska, Anchorage, Alaska, testified in support of SB 143. He stated that he had managed community associations for about 10 years in both Anchorage and Wasilla. He has experience with both pre- and post-1986 HOAs and has found the collection methods fairly easy for those formed after 1986. This helps the

capital reserves in an association over the long term. By contrast, there are past collections issues with older HOAs and the reserves can be inadequate to replace a roof or do other maintenance. He agreed with previous testimony that associations in less affluent areas are more likely to be affected. He stressed how difficult it is for older associations that are unable to change their declarations because the banks don't respond.

[2:04:01 PM](#)

VICE CHAIR STEVENS found no further public testimony or questions from the committee and solicited the will of the committee.

[2:04:11 PM](#)

SENATOR MICCICHE moved to report SB 143, work order 32-LS0211\I, from committee with individual recommendations and attached zero fiscal note(s).

VICE CHAIR STEVENS found no objection and SB 143 was reported from the Senate Labor and Commerce Standing Committee.

[2:04:49 PM](#)

At ease

SB 173-DENTIST SPEC. LICENSE/RADIOLOGIC EQUIP

[2:06:04 PM](#)

ACTING CHAIR STEVENS reconvened the meeting and announced the consideration of SENATE BILL NO. 173 "An Act relating to the practice of dentistry; relating to dental radiological equipment; and providing for an effective date."

[2:06:32 PM](#)

SENATOR DAVID WILSON, Alaska State Legislature, Juneau, Alaska, sponsor of SB 173, stated that the bill does two things: 1) it transfers the inspection of dental radiology equipment from the Board of Dental Examiners to the Department of Social Services; and 2) it establishes a specialty license. Members of the dental industry brought these suggestions forward and the matter has been considered in previous legislatures. These updates are needed and will enhance public safety. He deferred further introduction to Jasmin Martin.

[2:07:24 PM](#)

JASMIN MARTIN, Staff, Senator David Wilson, Alaska State Legislature, Juneau, Alaska, introduced SB 173 on behalf of the

sponsor. She stated that the components in the bill were contained in legislation in the 2020 session that was cut short [due to COVID-19]. She paraphrased the following sponsor statement.

[Original punctuation provided.]

Senate Bill 173 does two things. It transfers dental radiological equipment inspections from the Board of Dental Examiners to the Department of Health and Social Services and it establishes a specialty dental license in the State of Alaska.

For the first part, the Board of Dental Examiners currently certifies inspectors of dental radiological equipment who in turn conduct inspections at dental offices. This bill would move the authority and responsibility for inspections to the Department of Health and Social Services, which already inspects medical radiological equipment and employs state inspectors. This bill also allows for the collection of fees to cover the costs associated with inspection.

The second part of the legislation is a "truth in advertising" concept. It simply establishes that if a dentist advertises as a specialist in a field, they must meet certain minimum qualifications as a specialist as established by the Alaska State Board of Dental Examiners (board). There is currently no definition in statute for what a dental specialist is, and the board does not have the authority to define the term.

A dentist in Alaska can legally promote themselves as specialist in fields such as orthodontics, oral surgery, endodontistry, etc., even if they have no specialty training in that fields. The board cannot stop this practice if it does not have the authority to set standards for what a specialist is. This lack of authority for the board makes it difficult to police misleading advertisements to the public.

[2:08:37 PM](#)

MS. MARTIN presented the sectional analysis for SB 173. It read as follow:

[Original punctuation provided.]

Section 1: Conforming language in AS 08.01.065(c).

Section 2: Adds a new section (k) to AS 08.01.065 (Title 8. Business and Professions, Chapter 1. Centralized Licensing, Section 065. Establishment of fees)

Requires the Board of Dental Examiners to establish and collect fees on behalf of the Department of Health and Social Services for the inspection of dental radiological equipment.

Section 3: Adds new sections to AS 08.36 (Title 8. Business and Professions, Chapter 36. Dentistry)

AS 08.36.242. License to practice as a specialist required.

Establishes that a dentist may not advertise using the term "specialist," the name of a specialty, or other phrases that suggest they are a specialist unless they have a specialist license as established.

AS 08.36.243. Qualification for specialist; scope of practice.

- (a) Establishes that in order to qualify for a specialist licenses a person must
 - (1) Hold a dental license issued by the board and
 - (2) Meet the qualifications of a specialist as established by the board in regulation.
- (b) In creating the qualifications for a specialist license, the board shall consider the standards of a nationally recognized certifying entity approved by the board.
- (c) Establishes that a dental specialist can only claim to be a specialist in the specialty they hold a license in. Sec. 08.36.245. Suspension or revocation of specialist license. Establishes that a board may suspend or revoke a specialist license as set by AS 08.36.315.

Section 4: Adds a new section (d) to AS 44.29.020 (Title 44.

State Government, Chapter 29. Department of Health and Human Services, Section 020. Duties of the Department) Requires DHSS to establish standards of registration,

use, record keeping, and inspection of dental radiological equipment in compliance with federal law.

Section 5: Conforming language in AS 44.46.029

Section 6: Conforming language in AS 46.03.022

Section 7: Repeals:

AS 08.36.075: Section of law requiring the Board of Dental Examiners to set standards for inspection of dental radiological equipment. Placed under DHSS by section 4.

AS 18.05.065, AS 18.60.525(e), and AS 44.29.027: Sections of law prohibiting DHSS from regulating dental radiological equipment.

Section 8: Allows the Board of Dental Examiners, the Department of Commerce, Community, and Economic Development, and the Department of Health and Social Services to adopt regulations in line with this act.

Section 9: Allows the departments and board to immediately begin setting regulations.

Section 10: Set a delayed effective date for the rest of the act to July 1, 2023.

[2:10:33 PM](#)

ACCTING CHAIR STEVENS asked for the source of the funds that pay for the inspections.

MS. MARTIN replied that the Board of Dental Examiners collects fees to pay for the inspections and the funds are passed on to the Department of Health and Social Services.

VICE CHAIR STEVENS asked if the fees are collected from the licensed dentists who have equipment that is inspected.

MS. MARTIN answered yes.

SENATOR MICCICHE observed that the Department of Commerce, Community and Economic Development (DCCED) fiscal note reflects the need for a new position. He asked if the entire cost of the bill is covered by the licensing fees.

MS. MARTIN replied that is the intent, but she would defer to Ms. Chambers.

ACTING CHAIR STEVENS turned to invited testimony.

[2:12:02 PM](#)

DAVID LOGAN, DDS, Executive Director, Alaska Dental Society, Anchorage, Alaska, thanked the sponsor for introducing the bill and the committee for hearing it. He summarized that the bill has two parts: 1) it addresses expert inspections; and 2) it addresses specialty dental licenses. He deferred to Dr. Nielson to speak to why the issue of specialty licenses has been problematic for the board.

Speaking to the matter of inspections, he explained that dentists are required to have their x-ray machines inspected by a certified inspector once every six years. This has been difficult. At this time there are no certified inspectors in the state, and by the end of this year some dentists will either be faced with not providing x-rays or operating out of compliance, neither of which is acceptable.

[2:13:29 PM](#)

SENATOR GRAY-JACKSON thanked Dr. Logan for the meeting with her yesterday to explain the bill.

VICE CHAIR STEVENS asked how to prevent the potential compliance issue.

DR. LOGAN offered his understanding that if the inspections were transferred, the Department of Health and Social Services (DHSS) could promulgate regulations, set the standards, and presumably do the inspections. He noted that dentists could look at the date sticker on their equipment to determine whether or not an inspection was needed.

ACTING CHAIR STEVENS asked Ms. Chambers to address the question of funding the inspections.

[2:15:15 PM](#)

SARA CHAMBERS, Director, Division of Corporations Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), Juneau, Alaska, confirmed that the intention is that the individual dentists will be charged for the inspections and payment will be through recovery receipt supported services. As a general rule, if a program grows the associated costs are borne by the licensees in that industry. She said the DCCED fiscal note looks large but that is primarily because the program has not been operating for several years.

She described it as a public safety cost to cover the backlog of uncollected fees.

ACTING CHAIR STEVENS asked if she was concerned about x-ray equipment potentially being out of compliance.

MS. CHAMBERS replied that as a consumer of dental services and as the director of the division she would like assurance that dental radiological equipment in use is safe. She added that while the Board of Dental Examiners has employed different strategies to make this work, it is outside their scope. She posited that it is more appropriate for DHSS to address this missing piece.

SENATOR GRAY-JACKSON asked her to speak to the effect the specialty services component will have on Medicaid.

MS. CHAMBERS deferred the question to DHSS.

[2:18:25 PM](#)

ACTING CHAIR STEVENS asked Dr. Nielson if he had any comment on the bill.

[2:18:50 PM](#)

DAVID NIELSON, DDS, Chair, Alaska Board of Dental Examiners, Anchorage, Alaska, said he had prepared comments on Section 2 and was happy to answer any additional questions, but he thought Dr. Logan and Sara Chambers explained it very well. Moving to Section 3, he explained that the Dental Practice Act repealed specialty licenses in about 2012. The result was that the board stopped investigating false and misleading advertising complaints. To restart these investigations, it is necessary to have specialty license categories that can hold up under legal scrutiny. He highlighted that an accredited dental post-graduate program takes an extra two years of training beyond dental school. He also informed the committee that the board has had to deny a few licenses for specialists who want to come work in Alaska because there is no way to approve such an application without having a license type that is limited to a specialty area of dentistry.

ACTING CHAIR STEVENS asked if there were further questions.

[2:21:18 PM](#)

SENATOR GRAY-JACKSON said she would like somebody from DHSS to provide information about what effect the specialty services component will have on Medicaid.

ACTING CHAIR STEVENS passed the request to the committee aide for follow up.

[2:21:48 PM](#)

ACTING CHAIR STEVENS opened public testimony on SB 173; finding none, he closed public testimony. Finding no further questions or comments from the committee, he solicited the will of the committee.

[2:22:13 PM](#)

SENATOR MICCICHE moved to report SB 173, work order 32-LS0865\I, from committee with individual recommendations and attached fiscal note(s).

ACTING CHAIR STEVENS found no objection and SB 173 was reported from the Senate Labor and Commerce Standing Committee.

[2:22:37 PM](#)

At ease

SB 151-EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

[2:24:07 PM](#)

ACTING CHAIR STEVENS reconvened the meeting and announced the consideration of SENATE BILL NO. 151 "An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

He stated the intention to hear from the sponsor, take invited and public testimony, and asked the will of the committee.

[2:24:43 PM](#)

SENATOR PETER MICCICHE, sponsor of SB 151, stated that his staff would introduce the bill and go through sectional analysis.

[2:25:10 PM](#)

MADISON GOVIN, Staff, Senator Peter Micciche, Alaska State Legislature, Juneau, Alaska, introduced SB 151 on behalf of the sponsor with an abbreviated summary of the following sponsor statement.

[Original punctuation provided.]

Senate Bill 151 extends the sunset date for the Alcoholic Beverage Control (ABC) Board to June 30, 2026, in agreement with the September 2021 Legislative

Audit sunset review recommendation. The ABC Board is made up of five members, two industry, one public safety, one public, and one rural public.

In accordance with the provisions of Title 24 and Title 44, Legislative Audit reviewed the activities of the ABC Board and determined the board is effectively serving the public interest by controlling the manufacture, barter, possession, and sale of alcoholic beverages in the state. Findings also included that board meetings were conducted effectively, regulations were adopted to implement statutory changes, and investigations were conducted in a timely manner.

The audit concluded the board should improve procedures for licensing efficiencies and issuing renewals such as, improving the completeness and accuracy of initial applications, reducing delays associated with compliance information, issuing licenses in a timely manner, automating the application process and filling AMCO staff vacancies. Additionally, operational improvements are needed in enforcement, monitoring board-related local law enforcement activity, and processing refunds to municipalities. Given the important role in safeguarding the health and safety of Alaskans and the economic importance of the industry, the continuation of this board is critical to the regulation of the alcohol industry in Alaska.

I urge your support of this bill to extend the sunset date of the Alcoholic Beverage Control Board.

MS. GOVIN noted that Kris Curtis would present the audit in more detail.

[2:26:44 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, stated that the Legislative Audit Division conducted an audit of this board, the purpose of which was to determine whether the board should be extended and whether it was serving the public interest. She noted that a copy of the September 2021 audit was in the bill packet. She advised that this audit was unique because it not only included the sunset audit but also a special audit of the board's license process that the

Legislative Budget and Audit Committee requested. The report summarizes both audits.

MS. CURTIS advised that the Report Conclusions begin on page 9 of the audit. She paraphrased the second paragraph on page 9:

[Original punctuation provided.]

Overall, the audit found that board meetings were conducted effectively, regulations were adopted to implement statutory changes, and investigations were conducted in a timely manner. The audit also concluded that the Alcohol and Marijuana Control Office (AMCO) operations were impeded by the lack of an automated application process and significant vacancies. Further, deficiencies in controls over processing licensee fee refunds were identified.

MS. CURTIS stated that the audit recommends that the legislature extend the board 4 years, which is half the extension allowed in statute. This is to assure that the legislature has the ability to more timely review the board's progress in addressing these licensing deficiencies.

MS. CURTIS directed attention to Exhibit 2 on page 14 of the audit that reflects the 1,867 active licenses as of February 28, 2021. Additionally, the audit notes the board issued [1,177] catering and special event permits from FY2020 through February 2021. The audit noted a backlog of applications that were due December 2020. To allow the applicants to continue to operate while the review was pending, the board issued over 300 temporary licenses. The division was informed that the backlog was due to vacancies. The division investigated this further and the results of that review are on page 15.

MS. CURTIS advised that Exhibit 3 summarizes the AMCO staff positions that were vacant at least two months during the audit period. In total, there were 92 months that 7 staff positions were vacant from FY2018 through February 28, 2021. The reasons management gave for the vacancies were: the uncertainty related to an earlier proposal to merge AMCO into DCCED's Division of Corporations, Business and Professional Licensing; and the unknown effect of the COVID-19 pandemic on the alcoholic beverage and marijuana industries. Additionally, one position was not filled because the agency could not find workspace for a position that was transferred from Fairbanks to MatSu. She

reported that the audit found that the extended vacancies negatively affected AMCO's ability to support either board.

2:30:08 PM

MS. CURTIS stated that pages 16-18 summarize the detailed review of the license process. The audit found that overall 76 percent of new applications and 85 percent of transfer applications were approved within six months. On average, it took 153 days to approve and issue a new license and 131 days for a transfer license. The audit found that the complex license requirements made the application process complicated and inherently subject to error. Because the applications are submitted manually, they are not subject to online edits that might help limit errors.

2:30:56 PM

MS. CURTIS described three main aspects of the audit process that caused delays. (1 The applications were incomplete or inaccurate 96 percent of the time for new applications and 97 percent for transfer applications. Applications that are determined deficient are returned for correction, which causes delays. 2) Confirming compliance with statutory and regulatory requirements causes significant delays. Waiting for the compliance information adds an average of 88 days to the license process and 35 days for transfer applications. 3) Once all the requirements are met, issuing the license takes 23 days for a new license and 28 for a transfer license. The audit determined that automating this process could reduce the timeline.

2:32:10 PM

MS. CURTIS summarized the five recommendations of the audit that start on page 27.

[Original punctuation provided with some formatting changes.]

Recommendation No. 1: The Department of Commerce, Community, and Economic Development (DCCED) commissioner should ensure AMCO staff vacancies are filled in a timely manner and the AMCO director should implement written licensing procedures.

Recommendation No. 2: The board should significantly enhance or replace its licensing database and automate the application process where possible.

The audit found several inefficiencies associated with the receipt, review, and issuance of license applications.

Recommendation No. 3: The board and AMCO director should strengthen procedures for entering restricted purchasers in the statewide database of written orders.

MS. CURTIS noted that the prior sunset audit also included the above recommendation. Testing found that due to insufficient procedures, 27 individuals convicted of relevant violations were not entered into the statewide database of written orders that regulates the amount of alcohol that can be sold or purchased in areas that have voluntary restrictions on alcohol.

Recommendation No. 4: The board and AMCO director should implement procedures to ensure municipalities receiving refunds of biennial license fees are actively enforcing alcoholic beverage laws.

She noted that the prior sunset audit found that municipalities were automatically receiving these refunds even though they were not submitting the required quarterly reports. The current audit found that municipalities were submitting the quarterly reports but nobody looked at them.

Recommendation No. 5: The AMCO director should improve procedures and fill vacancies in a timely manner to ensure refunds to municipalities are appropriately reviewed.

MS. CURTIS noted that similar to the prior sunset audit, just one position in the AMCO office is responsible for calculating and approving the refund, and there is no review. The significant vacancies contributed to this deficiency.

[2:34:36 PM](#)

MS. CURTIS directed attention to the response to the audit, beginning with Commissioner Julie Anderson's response that begins on page 47. Regarding Recommendations 1 and 5, she maintained that all the vacancies had been filled. Regarding Recommendation 2, she reported the department is developing a needs assessment for an automated online database and online license renewals. Regarding Recommendation 3, the commissioner stated that the AMCO Enforcement Unit had entered all the individuals into the database and had implemented new procedures. Regarding Recommendation 4, the commissioner stated that improved procedures would be implemented in the future.

2:35:38 PM

MS. CURTIS stated that the response from the Chair of the ABC Board is on page 49. He strongly disagrees with the recommendation to extend the board four years, and maintains that an early sunset would jeopardize the public's trust and undermine confidence in the public process. The Chair agrees with the recommendations but believes the findings were not materially sufficient to warrant a short extension. She highlighted that over the last 20 years, this board has received a three or four year extension in previous audits. She did not recall any extension in the last 20 years that was longer than four years.

ACTING CHAIR STEVENS summarized his understanding that an extension for the ABC Board would normally be eight years and this audit recommends a four-year extension.

MS. CURTIS clarified that eight years is the maximum extension if the audit determines the entity is operating without any concerns. If the division determines an entity should be reviewed more frequently because of things such as major changes to the alcohol laws, that would be a reason to review the board earlier than eight years.

ACTING CHAIR STEVENS asked when the last audit was conducted.

MS. CURTIS replied it was four years ago.

ACTING CHAIR STEVENS asked if she believes all the recommendations could be achieved in the next four years.

MS. CURTIS offered her belief that it would be possible to implement a new database in that timeframe but the board has some concern about whether that is possible. She suggested the board and the division explain why it might take longer.

2:37:56 PM

ACTING CHAIR STEVENS turned to invited testimony.

2:38:02 PM

DANA WALUKIEWICZ, Chair, Alcoholic Beverage Control Board, Anchorage, Alaska, stated that the ABC Board asked him to speak to the sunset provisions in SB 151. In particular, the board is requesting a six or eight year extension as opposed to the four year extension that Legislative Audit Division recommended. Speaking as a CPA with more than 20 years of experience, he said

he agrees with the individual findings but not the overall conclusion that the board should be extended just four years.

MR. WALUKIEWICZ discussed the audit findings relating to 1) the lack of staffing; and 2) the lack of an automated system to process and track new and renewal applications. He acknowledged that the AMCO office had vacancies during the period the audit reviewed, but maintained that it had nothing to do with the board or executive director. Rather, it was a result of the Department of Commerce, Community and Economic Development (DCCED) delaying job vacancy announcements. He pointed out that the AMCO office currently is fully staffed.

Speaking to the second finding, he emphasized that the board fully supports procuring and implementing an automated system to process and track new and renewal applications. He highlighted that the board asked the executive director to scope the system requirements and investigate potential vendors and acknowledged that DCCED was assisting. However, neither the board nor AMCO has the resources to procure such a system. SB 9 has funds earmarked for this project and the hope is that it will pass both chambers this session and the funds will become available to automate the application process. The board agrees that the paper-based process is both time consuming and error prone.

[2:41:22 PM](#)

MR. WALUKIEWICZ restated his belief that the recommendation to extend the board for just four years was a mistake, particularly given that it has served the public interest for over 40 years. He stressed that the board will have a lot of work when SB 9 becomes law and a six- to eight-year extension would send a strong message of support for the board that has upheld the public process and met the public need.

[2:42:24 PM](#)

ACTING CHAIR STEVENS noted who was available to answer questions.

[2:42:50 PM](#)

ACTING CHAIR STEVENS opened public testimony on SB 151; finding none, he closed public testimony.

He solicited the will of the committee.

[2:43:10 PM](#)

SENATOR GRAY-JACKSON moved to report SB 151, work order 32-LS1280\A, from committee with individual recommendations and attached fiscal note(s).

2:43:28 PM

ACTING CHAIR STEVENS found no objection and SB 151 was reported from the Senate Labor and Commerce Standing Committee.

2:43:48 PM

There being no further business to come before the committee, Acting Chair Stevens adjourned the Senate Labor and Commerce Standing Committee meeting at 2:43 p.m.